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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

W.P.No.14733 of 2020

Gafoor ... Petitioner

-Vs-

1.The Under Secretary,
Government of India
Ministry of Home Affairs
Freedom Fighters Division
1st Floor, Lok Nayak Bhavan
New Delhi.

2.The Chief Secretary
Government Public Political Pension
(General) Department, Tamil Nadu
Government, St.George Fort
Chennai.

3.The District Collector, Chennai District
Chennai.

4.The Tahsildar, Perambur-Purasaiwalkam
Perambur, Chennai 600 011. ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus directing the respondents to grant the freedom fighters pension to the petitioner from the year 1997 on the date of his application under central Swandra Sainik Samman scheme and also direct the 2nd and 3rd Respondent to grant the freedom fighters pension to the petitioner under the freedom fighters revision scheme of Tamil Nadu State Government by considering the petitioners representations dated 11.9.2020 within time frame fixed by this Honourable court.

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For Petitioner : Mr.I.Abdul Basith

For Respondents : Mr.Karthikeyan, Asst.Solicitor General - for R1
Mr.G.K.Muthukumar, Special Govt.Pleader
- for RR 2, 3 and 4

O R D E R

The prayer sought for herein is to direct the respondents to grant the freedom fighters pension to the petitioner from the year 1997 on the date of his application under central Swandra Sainik Samman scheme and also direct the 2nd and 3rd Respondent to grant the freedom fighters pension to the petitioner under the freedom fighters Pension scheme of Tamil Nadu State Government by considering the petitioners representations dated 11.9.2020 within a time frame fixed by this Court.

2. The petitioner is a freedom fighter and he had been imprisoned, during the freedom struggle, at Burma in the year 1945 and thereafter in or about 1964, he had come to India to settle at the outskirts of Chennai in the place allotted by the State Government for persons returned from Burma.

3. Though the petitioner had been a freedom fighter and when he was living in Burma during the freedom struggle in the year 1945, he had been imprisoned for more than six months, the relevant documents pertaining to the petitioner's jailing in Burma since could not be traced, belatedly the petitioner was able to get the co-prisoner's certificate from two co-prisoners, who certified that, the petitioner had been in Jail during the freedom struggle in 1945 along with them and accordingly, in the year 1997 the petitioner has made an application to the State Government as well as the Central Government under two separate schemes seeking Freedom Fighters Pension.

4. In this regard, there had been number of proceedings and correspondences between the petitioner and the State Government as well as the Central Government authorities for all these years. Despite the same, nothing fruitful has come from the State Government as well as the Central Government and ultimately the petitioner could not get the freedom fighters pension from both the Governments, and at last he has filed this writ petition to direct the respondents / both the State and Central Government authorities to consider the request of the petitioner for sanctioning the State Government as well as Central Government Pension under the Swatantra Sainik Samman Scheme (hereinafter referred to as 'S.S.S. Pension Scheme').

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5. When this writ petition was taken up for hearing in the earlier dates, this Court on 13.10.2020, has passed the following order.

> "5. In view of the very advanced age of the petitioner, who is already running 99, this Court wants the matter to be decided at the earliest point of time and in this regard, Mr.Karthikeyan, learned Assistant Solicitor General takes notice for the first respondent to get quick response for filing written statement and to assist the Court. Insofar as respondents 2 to 4, who are the State Authorities are concerned, the petitioner is permitted to give notice privately to the learned State Government Pleader, who on receipt of the same, shall get immediate response and to file a status report before this Court during the next hearing date. Post on 6.11.2020."

6. Pursuant to that, on 09.11.2020 when the case came up for hearing, it was submitted by the learned Assistant Solicitor General appearing for the Central Government and the learned Special Government Pleader appearing for the State Government that, the request of the petitioner has not been favourably considered.

7. Therefore, in order to ascertain the actual fact as to what had happened and what transpired between the petitioner and the Government Authorities in this regard for more than 20 years, this Court directed the State Government counsel to produce the original files. Accordingly, the entire file pertaining to the petitioner was produced before this Court on the next hearing ie., on 11.11.2020.

8. On a perusal of the relevant file and after hearing both sides, this Court passed the following interim order on 11.11.2020.

> "Mr.Muthukumar, learned Special Government Pleader appearing for the respondents 2 to 4 has produced the file and submitted that, though the issue has been pending for several years, the officials of the Government side alone cannot be blamed for the delay, as in between, several correspondences taken place between the petitioner and the respondents. At one point of time, the documents filed in support of the claim made by the petitioner having not been considered, for which, the Committee headed by the

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Collector concerned was of the opinion that, the two co-prisoners certificates produced by the petitioner were not clear and also there are some discrepancy in the claim made by the petitioner with regard to his Date of Birth, therefore preliminarily these things have to be rectified and it can be considered later on.

2. Thereafter also it seems that, several correspondences taken place between the petitioner and the respondents and ultimately in the year 2018, the District Collector, after having gone through all these documents, seems to have decided that, the co-prisoner certificates produced by the petitioner are not clear, therefore on that ground, a negative recommendation would be made to the Central Government on getting SSS Pension.

3. However, the learned Special Government Pleader would fairly submit that, as far as the sanction of the State Government pension, though initially, as per the relevant Rules and the Government Orders, only some of the specified certificates have to be taken into account as a primary documents for the purpose of sanctioning the State Government Pension for freedom fighters, subsequently, the co-prisoner certificate was also considered to be one of the document based on which, the case of the freedom fighter who seek State Government Freedom Fighters Pension can be considered. In this context, he would further submit that, one co-prisoner certificate with relevant particulars to the satisfaction of the Scrutiny or Screening Committee is submitted by the Freedom Fighter concerned, who seeks for freedom fighters pension from the State Government, based on that, the request of the seeker of pension would be considered.

4. In this context, the learned Special Government Pleader has also pointed out that, out of the two co-prisoners certificates given in support of the claim of the petitioner, the certificate given by one Kumar, who is also a freedom fighter, is not in the format and in fact, it has not given the detail as to from which period to which period, he had undergone the imprisonment and during that period, whether the petitioner was also imprisoned in the same jail, unless those particulars are

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given, it cannot be construed that, it is a valid co-prisoner certificate, therefore the said certificate given by one Kumar, in support of the case of the petitioner cannot be considered. However, he would further submit that, insofar as the co-prisoner certificate of one freedom fighter R.Kannan is concerned, though it is in the format, where, also the period of the imprisonment undergone by him as well as the petitioner has been mentioned, even in that certificate also, there is a discrepancy to state that, the certifier had undergone imprisonment from April 1945 to March 1945. Since this discrepancy is found in the co-prisoner certificate, based on which only, the Screening Committee took a decision in 2015 to clarify this position and in this regard, since the clarification has not come from the petitioner side, the matter has been kept pending all along and thereafter, at one point of time, it was decided that, based on the said co-prisoner certificate, recommendation cannot be made to the Central Government for considering the case of the petitioner for sanctioning of SSS Pension.

5. Therefore, the learned Special Government Pleader submits that, this is the position as of now prevailing, therefore based on which the issue can be decided by this Court judiciously.

6. I have considered the said submissions made by the learned Special Government Pleader appearing for the State Government and have gone through the materials placed before this Court.

7. In the original records, the co-prisoner certificate given by two freedom fighters, namely one R.Kannan and one O.Kumar are available. Insofar as the certificate issued by one O.Kumar, the details that from which period to which period, the said certifier had undergone the imprisonment has not been stated and also it has not been stated in the said certificate that the petitioner had undergone the imprisonment during the relevant period. Unless these particulars are given by the certifier of the co-prisoner certificate, the said claim made by either the certifier or the petitioner cannot be verified.

8. Be that as it may, insofar as the co-prisoner certificate given by R.Kannan, it has been clearly

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mentioned that the certifier had been in jail at Burma from April 1945 to March 1946 (erroneously mentioned as 1945) and it has further been stated in that certificate that, the petitioner had also undergone the imprisonment in the same jail during the relevant period, i.e., from July 1945 to January 1946.

9. Because of the typographical error crept in the certificate, where, instead of March 1946, it has been typed as March 1945, that seems to have triggered the Screening Committee to take a decision that, there is a discrepancy in the certificate and only based on the alleged discrepancy, it seems that, the said co-prisoner certificate given by R.Kannan, not have been accepted by the State Authorities. However, in order to appreciate the said certificate, the entire content of the certificate is extracted for easy reference:

> "Co-Prisoner Certificate
>
> I, R.Kannan, son of Rangswamy, (late) Freedom Fighter, Pensioner, residing at No.1276, V Block, V.O.C.Nagar, Tondiarpet, Chennai-81 do hereby solemnly and sincerely declare that I know S.Gafoor, son late.Sulaiman, residing at No.350, B.V.Colony, Plot No.385, 7th Street, Vysarpadi, Chennai - 600 039, personally from Burma. He has been an I.N.A. Person attached to the Nehru Brigade and was in Combat Service in Burma war Grant.
>
> The said S.Gaffoor was arrested by the British Forces and imprisoned in Rangoon Central Jail from 1945 to January 1946. I was arrested by the British Forces and imprisoned in Rangoon Central Jail from April 1945 to March 1945 and the said S.Gaffoor was a co-prisoner with me in the said Jail from July 1945 to January 1946.
>
> I am getting freedom fighter pension from Central Revenue Home Ministry Order No.29/MDS/15631/681/INA, dated 27.10.1993.
>
> Solemny affirmed and signed this 18th day of his name Sd/-

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(R.Kannan)
at Madras 1997 in my
Deponent "
presence.

10. In the second para, the words, "from April 1945 to March 1945" since has been wrongly typed as 1945 instead of 1946 as it could not be between April 1945 to March 1945, the same can very well be ascertained from the wordings used in the next and last sentence of para 2 of the certificate which says that, "the said S.Gaffoor was a co-prisoner with me in the said jail from July 1945 to January 1946". Therefore within the period between April 1945 and March 1946, where the certifier has undergone the imprisonment in the same jail, the petitioner also had undergone the imprisonment between July 1945 and January 1946.

11. It is further to be noted that, as has been pointed out by the learned Special Government Pleader appearing for the State Government, one of the main criteria, based on which the authorities can be satisfied, is that, the co-prisoner certificate certifying that, the freedom fighter has undergone the imprisonment and in this regard, originally the requirement of imprisonment was three months and subsequently, it has been reduced to one month and later on, it was further reduced to three weeks. Therefore as of now, the requirement of the State Government is that, if a freedom fighter had undergone imprisonment for three weeks, that is enough, based on which, the case of the pension seeker can be considered.

12. Here in the case on hand, as per the co-prisoner certificate, the petitioner had undergone imprisonment for more than six months, i.e., July 1945 to January 1946 and the same has also been certified by a co-prisoner who had undergone more than one year imprisonment in the same jail and whose sacrifice has been recognised by the Central Government, by sanctioning SSS Pension to the said certifier / freedom fighter, by order dated 27.10.1993 itself.

13. Therefore, on the basis of this prima facie material, that too from the contents of the co-prisoner certificate issued by R.Kannan, this Court

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feels that, this aspect can very well be considered by the District Level Screening Committee / District Collector / State Government and if this is considered, certainly, this Court is in fond hope that, the request of the petitioner would be accepted for sanctioning atleast the State Government Freedom Fighter's Pension.

14. It is also to be noted that, as per the Aadhar Card issued by the Central Government, the petitioner's date of birth is of the year 1921 and in support of this, the petitioner has also produced a medical certificate issued by the Doctor after diagnosing the physic of the petitioner. Therefore, these documents can also be taken into account for the purpose of arriving the date of birth or birth year of the petitioner, only for the limited purpose to satisfy that, during the relevant point of time in the freedom struggle i.e., between 1940 to 1945 atleast the petitioner had been in the tender age of not less than 15 years.

15. Therefore, taking into account the aforesaid, this Court is inclined to pass the following order :

(i) that the respondents 2 to 4 are hereby directed to place these documents for scrutiny either before the District Level Screening Committee headed by the District Collector concerned or before the State Government consisting of the officials of the Public (Freedom Fighters Pension) Department and accordingly decide the claim of the petitioner based on the co-prisoner certificate issued by one R.Kannan by taking into account the observation made by this Court in this order and accordingly, take a decision thereon.

(ii) The said exercise, as indicated above, shall be undertaken by the authorities at the earliest and communicate the decision to this Court, by filing a status report during the next hearing date. For the said purpose, post this matter on 26.11.2020.

16. The learned Special Government Pleader is directed to get back the original file from this Court and the same can be reproduced during the next hearing.

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8. Pursuant to the same, when the case is taken up for hearing today Mr.G.K.Muthu Kumar, learned Special Government Pleader has submitted that, pursuant to the orders passed by this Court the issue as to whether the State Government Freedom Fighters Pension can be sanctioned to the petitioner was placed before the State Level Review Committee, where, the case of the petitioner has been decided to be recommended to the State Government for sanctioning Freedom Fighters Pension. The decision was communicated by the District Collector, Chennai to the State Government. Accordingly, on receipt of the recommendation of the State Level Review Committee, the State Government, having decided to accept the said recommendation, has passed orders sanctioning the Freedom Fighters Pension of the State Government to the petitioner on 05.12.2020 in Sanction No.14152 sanctioning the State Government Freedom Fighters Pension from the date of the order ie., 05.12.2020.

9. Learned Special Government Pleader has also produced a copy of the Sanction Order dated 05.12.2020 before this Court for perusal and for further orders.

10. I have gone through the said Sanction Order now passed by the State Government dated 05.12.2020, which reads thus:

> "ஆணை
>
> பார்வை ஒன்றில் கண்டுள்ள சென்னை மாவட்டத்தைச் சேர்ந்த திரு.எஸ்.கபூர், த/பெ (மறைந்த) சுலைமான் என்பவர் மத்திய மற்றும் மாநில அரசு விடுதலைப் போராட்ட வீரர் ஓய்வூதியம் வழங்கவேண்டி சென்னை உயர்நீதிமன்றத்தில் நீதிப்பேராணை மனு எண் (W.P.NO) 14733/2020 – இல் தொடர்ந்த வழக்கில் கடந்த 11.11.2020 அன்று வழங்கப்பட்ட இடைக்கால தீர்ப்பில், மனுதாரர் சமர்ப்பித்த மனுவினை மாநில சீராய்வுக் குழுக்கூட்டத்தில் பரிசீலித்தும், மனுதாரரால் சமர்ப்பிக்கப்பட்ட சகக்கைதிச் சான்றிதழின் அடிப்படையிலும், ஓய்வூதியம் வழங்குவது தொடர்பாக அரசால் எடுக்கப்பட்ட முடிவினை இ வ்வழக்கின் அடுத்த விசாரணை நாளான 26.11.2020 –க்குள் அறிக்கையாக சமர்ப்பிக்குமாறு சென்னை உயர்நீதிமன்றம் இடைக்கால உத்தரவு பிறப்பித்தது. அதனைத் தொடர்ந்து மனுதாரர் மனுவினை மாநில சீராய்வுக் குழுக் கூட்டத்தில் சமர்ப்பிக்கப்பட்ட ஆவணங்களின் அடிப்படையில் பரிசீலித்து ஓய்வூதியம் வழங்கலாம் என மாநில சீராய்வுக் குழுவினரால் தீர்மானிக்கப்பட்டதாகவும், இதனடிப்படையில் மனுதாரர் திரு.எஸ்.கபூர், த/பெ (மறைந்த) சுலைமான் என்பவருக்கு முன்னாள் இந்திய தேசிய இரா ணுவத்தினருக்கான மாநில அரசு சுதந்திரப் போராட்ட வீரர் ஓய்வூதியம் வழங்கலாம் என மாவட்ட ஆட்சித் தலைவர், சென்னை மாவட்டம் அவர்கள் பார்வை மூன்றில் கா ணும் தனது கடிதத்தில் அரசுக்கு பரிந்துரைத்துள்ளார்.
>
> 2. மேற்கா ணும் மாண்பமை சென்னை உயர்நீதிமன்றத்தின் இடைக்கால உத்தரவின் அடிப்படையிலும், மாவட்ட ஆட்சியர், சென்னை மாவட்டம் மற்றும் மாநில சீராய்வுக் குழுவினரின் பரிந்துரைகளின் அடிப்படையிலும், மனுதாரரின் கோரிக்கை மனு அரசால் கவனமாக பரிசீலிக்கப்பட்டு மனுதாரர் திரு.எஸ்.கபூர், த/பெ (மறைந்த) சுலைமான்,

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சென்னை மாவட்டம் என்பவருக்கு விதிகளை தளர்த்தி, சிறப்பு நிகழ்வாக முன்னாள் இந்திய தேசிய இரா ணுவத்தினருக்கான மாநில அரசு சுதந்திரப் போராட்ட வீரர் ஓய்வூதியம் ஆணை பிறப்பிக்கப்படும் நாள் முதல் அவரது வாழ்நாள் வரை வழங்கலாம் என அரசு முடிவு செய்கிறது.

3. மேற்கண்ட முடிவிற்கிணங்க, சென்னை மாவட்டம், வியாசர்பாடி, பிவி காலணி, 7 வது தெரு, கதவு எண் 384/350 / இல் வசித்து வரும் மனுதாரர் திரு.எஸ். கபூர், த/பெ (மறைந்த) சுலைமான் என்பவருக்கு முன்னாள் இந்திய தேசிய இரா ணுவத்தினருக்கான மாநில அரசு சுதந்திரப் போராட்ட வீரர் ஓய்வூதியம் மாதம் ஒன்றுக்கு ரூ.17,000// (ரூபாய் பதினேழாயிரம் மட்டும்) மற்றும் மருத்துவப்படி ரூ.500// (ரூபாய் ஐநூறு மட்டும்) இ வ்வாணை வெளியிடப்படும் நாளிலிருந்து அவரது வாழ்நாள் வரை வழங்க இதன் மூலம் ஆணையிடப்படுகிறது. மேற்படி ஓய்வூதியம் அவ்வப்போது அரசால் உயர்த்தப்படும்போது, உயர்த்தப்பட்ட விகிதத்தில் ஓய்வூதியதாரர் பெற தகுதியுடையவராவர்.

4. மேலே பத்தி மூன்றில் வழங்க ஆணையிடப்பட்ட மாநில அரசு விடுதலைப் போராட்ட வீரர் ஓய்வூதியம், சென்னை மாவட்ட ஓய்வூதியம் வழங்கும் அலுவலரால் ஓய்வூதியதாரருக்கு வழங்க நடவடிக்கை எடுக்கப்பட்டு வழங்கப்படல் வேண்டும்.""

11. In view of the said Sanction Order dated 05.12.2020 passed by the State Government under the Freedom Fighters Pension sanctioned to the petitioner by the State Government from the date of the order ie., 05.12.2020 is at the rate of Rs.17,000/- per month and the same would be enhanced as and when such enhancement is made by the State Government for all freedom fighters who get sanction from the State Government. At least the petitioner at his age of 99 is able to get the recognition from the State Government that, he had been a freedom fighter and accordingly the said sanction has been given, and therefore he can enjoy the said benefit for the service he rendered to the nation.

12. Insofar as the sanctioning of the 'S.S.S. Pension' of the Central Government is concerned, learned Assistant Solicitor General Mr.Karthikeyan has submitted that, in view of the earlier negative recommendation made by the State Government, the Central Government is not in a position to sanction the 'S.S.S.Pension' to the petitioner. However, now, since the State Government has reviewed their stand and sanctioned the pension by Sanction Order dated 05.12.2020 by recognizing the co-prisoner's certificate issued in this regard in favour of the petitioner, based on this development, let the State Government make a fresh recommendation to the Central Government and once such a recommendation is made by the State Government with relevant documents and materials, the same would be considered by the Central Government, of course in accordance with the provisions of the S.S.S.Pension Scheme and accordingly final decision would be taken by the Central Government as to whether the petitioner can be sanctioned the S.S.S.Pension.

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13. In view of the said developments taken place and the submissions made by the respective counsel appearing for the parties, this Court is inclined to pass the following orders.

(a) That the State Government sanctioning of the State Government Freedom Fighters Pension to the petitioner by Sanction Order No.14152 dated 05.12.2020, is hereby taken on record.

(b) Pursuant to the said Sanction Order dated 05.12.2020, the petitioner, at least, shall be entitled to get the State Government pension from that date ie., 05.12.2020 at the rate of Rs.17,000/- (Rupees Seventeen Thousand Only) per month and the same could be enhanced when such enhancement is announced by the State Government for all the freedom fighters who get such sanction from the State Government.

(c) Pursuant to the said order dated 05.12.2020, the State Government Authorities shall take immediate steps to comply with the said order and the payment of Freedom Fighters Pension with effect from 05.12.2020 shall be ensured, and within a period of 30 days after paying the said amount for the current month, the State Government authorities of the relevant department, who look after the Freedom Fighters Pension Scheme, shall file a compliance report in this Court in the third week of January 2021.

(d) The State Government authorities who are respondents herein are also directed to forward the aforesaid development with all relevant records including the recommendation of the State Level Review Committee taken recently pursuant to the orders passed by this Court and the Sanction now made through Sanction Order dated 05.12.2020 to the Central Government with such recommendation, within a period of one month from the date of receipt of a copy of this order.

(e) On receipt of such recommendation with relevant records, including the State Government Sanction Order dated 05.12.2020, the Central Government / first respondent shall consider

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such recommendation, unmindful of the earlier recommendation made by the State Government, and, after considering the same under the provisions of the S.S.S. Pension Scheme, the Central Government authorities shall pass necessary final orders with regard to the sanctioning of the Central Government Pension under S.S.S. Scheme to the petitioner and the final order to that effect shall be passed by the Central Government within a period of two months from the date of receipt of such recommendation forwarded by the State Government as indicated above.

14. This Court expresses its satisfaction the way in which the State Government has acted upon, at least after filing of this writ petition and the orders passed by this Court earlier in this writ petition.

15. With the above directions and observations, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Under Secretary, Government of India, Ministry of Home Affairs, Freedom
Fighters Division,
1st Floor, Lok Nayak Bhavan,
New Delhi.

2.The Chief Secretary,
Government Public Political Pension (General) Department,
Tamil Nadu Government,
St.George Fort, Chennai.

3.The District Collector,
Chennai District,
Chennai.

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4.The Tahsildar,
Perambur-Purasaiwalkam,
Perambur,
Chennai 600 011.

+1cc to the Government Pleader Sr.39580
+1cc to Mr.G.Karthikeyan, Assistant Solicitor General of India Sr.39345
+1 CC to Mr.I.Abdul Basith, Advocate sr 39933(30/12/2020)

W.P.No.14733 of 2020

gj[co]
srg 09/12/2020

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